

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ERMELINDA CRUZ,

Plaintiff,

and

DSW, INC. BENEFIT PLAN,
and DESIGNER BRANDS, INC.,

Case No.

Involuntary Plaintiffs,

v.

THE TRAVELERS INDEMNITY COMPANY
OF CONNECTICUT, MONSON & SONS, INC.,
and TRAVIS CHRIS,

Defendants.

NOTICE OF REMOVAL

Defendants, The Travelers Indemnity Company of Connecticut, Monson & Sons, Inc., and Travis Chris, by and through their counsel, hereby submit their Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, and in support of the removal of this action from the Circuit Court of Racine County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin, state as follows:

1. This action was initiated by the plaintiff, Ermelinda Cruz, in the Circuit Court of Racine County, Wisconsin on October 12, 2021 and is currently pending in

said Court as Civil Action No. 2021-CV-001341. A copy of the Summons and Complaint is attached hereto as Exhibit A and incorporated herein by reference.

2. Plaintiff also named as involuntary plaintiffs, American Family Mutual Insurance Company, S.I. (subsequently dismissed from action), UnitedHealthcare Insurance Company (now identified as DSW, Inc. Benefit Plan), and Designer Brands, Inc., which are nominal parties with statutory subrogation interests. *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 369 (7th Cir. 1993). As nominal parties, the involuntary plaintiffs are not real parties in interest and do not need to consent to the removal of this action. *Vandervest v. Wisconsin Cent. Ltd.*, 936 F. Supp. 601, 605 (E.D. Wis. 1996).

3. The defendants and involuntary plaintiffs were each served with a copy of the Summons and Complaint as evidenced by the affidavits and certificates of service attached hereto as Exhibit B and incorporated herein by reference.

4. On November 11, 2021, the plaintiff petitioned the Court for the dismissal of the involuntary plaintiff, American Family Mutual Insurance Company, S.I., as a party to the action, and on November 19, 2021, the Court entered an Order for Voluntary Dismissal. A copy of the Petition and Order are attached hereto as Exhibit C and incorporated herein by reference.

5. On November 29, 2021, the defendants filed a Motion, Brief, and Affidavit to Transfer Venue of the action to Waukesha County Circuit Court and their Answer and Affirmative Defenses to the plaintiff's Complaint. Copies of the defendants' Motion, Brief, and Affidavit to Transfer Venue and Answer and

Affirmative Defenses are attached hereto as Exhibits D and E and incorporated herein by reference.

6. On December 15, 2021, the plaintiff filed an Affidavit and Brief in Opposition to the Defendants' Motion to Transfer Venue. Copies of the plaintiff's Affidavit and Brief are attached hereto as Exhibit F and incorporated herein by reference.

7. On January 4, 2022, the involuntary plaintiff, UnitedHealthcare Insurance Company, filed a Motion and Order to Name Proper Party of Interest and its Answer, Counterclaim, Cross-Claim and Affirmative Defenses to the plaintiff's Complaint. Copies of the involuntary plaintiff's Motion, Order, and Answer, Counterclaim, Cross-Claim and Affirmative Defenses are attached hereto as Exhibits G and H and incorporated herein by reference.

8. On January 7, 2022, the plaintiff filed an Answer to Cross-Claim of UnitedHealthcare Insurance Company. A copy of the Answer to Cross-Claim is attached hereto as Exhibit I and incorporated herein by reference.

9. Also on January 7, 2022, the defendants filed a Motion, Brief, and Affidavit for a Protective Order. Copies of the defendants' Motion, Brief, and Affidavit are attached hereto as Exhibit J and incorporated herein by reference.

10. On January 11, 2022, the plaintiff filed an Objection, Brief, and Affidavit in response to the defendants' Motion for Protective Order which also included an objection to the Court scheduling the motion on the same date as the hearing on the

defendants' Motion to Transfer Venue. Copies of the plaintiff's Objection, Brief, and Affidavit are attached hereto as Exhibit K and incorporated herein by reference.

11. On January 12, 2022, the Court entered an Order substituting DSW, Inc. Benefit Plan as an involuntary plaintiff in place of UnitedHealthcare Insurance Company. A copy of the Order is attached hereto as Exhibit L and incorporated herein by reference.

12. On January 19, 2022, the defendants filed an Answer to DSW, Inc. Benefit Plan's Counterclaim. A copy of the Answer to Counterclaim is attached hereto as Exhibit M and incorporated herein by reference.

13. Defendants have not been served with any process, pleadings or orders in this action, and no other process, pleadings or orders have been filed in this action other than the documents attached hereto as Exhibits A through M.

14. Removal of this action as originally filed in Racine County Circuit Court was not possible despite the complete diversity of the parties in that the defendants did not have information from the plaintiff as to the alleged value of her claim, and no damage amount was pled by the plaintiff in order to meet the \$75,000 threshold for removal.

15. On December 29, 2021, the defendants served the plaintiff with their first set of written discovery requests which included two requests for admission as to the value of the plaintiff's claim. On February 10, 2022, the plaintiff responded to the defendants' requests for admission affirming that she was seeking damages in

excess of \$75,000. A copy of the Plaintiff's Responses to Requests For Admission is attached hereto as Exhibit N and incorporated herein by reference.

16. This notice is timely filed pursuant to 28 U.S.C. § 1446(b) in that:

(a) thirty (30) days have not expired since February 11, 2022, the date on which the defendants were served with the Plaintiff's Responses to Requests for Admission and from which it could first be ascertained that the action had become removable; and

(b) one (1) year has not expired since October 12, 2021, the date on which the plaintiff commenced her action in the Circuit Court of Racine County.

17. The plaintiff, Ermelinda Cruz, is an adult citizen of Sturtevant, Wisconsin. The defendant, The Travelers Indemnity Company of Connecticut, is a Connecticut insurance company having its principal place of business in Hartford, Connecticut. The defendant, Monson & Sons, Inc., is an Iowa corporation having its principal place of business in Britt, Iowa. The defendant, Travis Chris, is an adult citizen of Waterloo, Iowa.

18. Based upon the Plaintiff's Responses to Requests for Admission, the matter in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs.

19. This court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between individuals and corporations deemed citizens of different states.

WHEREFORE, the defendants, The Travelers Indemnity Company of Connecticut, Monson & Sons, Inc., and Travis Chris, respectfully request that this case be removed from the Racine County Circuit Court of Wisconsin to the United States District Court for the Eastern District of Wisconsin.

Dated: March 1, 2022.

s/Jay R. Starrett

Jay R. Starrett

State Bar No. 1011278

Andrew R. Brehm

State Bar No. 1091306

Attorneys for Defendants

SCOPELITIS GARVIN LIGHT HANSON &
FEARY P.C.

330 East Kilbourn Avenue, Suite 827

Milwaukee, WI 53202

Telephone: (414) 219-8500

Fax: (414) 278-0618

E-Mail: jstarrett@scopelitis.com
abrehm@scopelitis.com

4870-5616-2065, v. 1